APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-5055

RAYMOND SMITH AND MELVIN MCCLAIN
Petitioners,

—v.—

FLORIDA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR CERTIORARI FILED DECEMBER 14, 1970
CERTIORARI GRANTED JUNE 14, 1971

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IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 68-6546 (A)
(B)

STATE OF FLORIDA, PLAINTIFF

v.

RAYMOND SMITH AND MELVIN GRAHAM MCCLAIN,
DEFENDANTS

Miami, Florida

Wednesday, December 18, 1968

The above-entitled case came on for trial before the Hon. Jack M. Turner, Judge of the above-styled court, at 3151 Northwest 12th Street, Miami, Florida, on Wednesday, December 18, 1968, at 10 o'clock a.m., pursuant to notice.

APPEARANCES:

BARBARA D. SCHWARTZ, ESQ., Assistant State Attorney, on behalf of the State of Florida.

PHILLIP A. HUBBART, ESQ., Assistant Public Defender, on behalf of the Defendants.

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EXHIBITS

[fol. 3] MRS. SCHWARTZ: Raymond Smith and Melvin Graham McClain.

MR. HUBBART: Your Honor, at this time I would like permission to dictate a motion to dismiss into the record with respect to Count One.

COURT: All right.

MR. HUBBART: Comes now the defendants, Raymond Smith and Melvin Graham McClain, and respectfully moves this Honorable Court to dismiss Count One of the Information filed in this cause on the ground that Florida Statute 856.02 is void for vagueness under the 14th Amendment to the United States Constitution; particularly that section of Florida Statute 856.05, which proscribes, "wandering and strolling around from place to place without a lawful object."

That particular section of the statute I maintain is a violation of the due process clause of the 14th Amendment because it is void for vagueness; it has no ascertainable standard of guilt stated therein, and under the United States Supreme Court decision of Lanzetta versus New Jersey, any state criminal statute which fails to state an ascertainable standard of criminal guilt in a criminal statute is void for vagueness and is unconstitutional.

Accordingly the Count, Count One, which is based on that particular section of the statute, we submit [fol. 4] should be dismissed in this cause.

THE COURT: All right. I will deny the motion. I find that the statute is crystal clear.

All right, let's swear the witnesses.

(Thereupon the witnesses and defendants were duly sworn by the Clerk.)

MR. HUBBART: Your Honor, I would like to invoke the rule on witnesses.

MRS. SCHWARTZ: Really, I have one witness. The other is just about the ownership of the car and the railroad.

MR. HUBBART: Oh, all right. Your Honor, I will withdraw that.

Is Mr. Hastings in Court here?

MRS. SCHWARTZ: No, that is why I asked you if you wanted it notarized, or we can bring the vice president before the—

MR. HUBBART: Well, this doesn't, I think, fall under the statute.

MRS. SCHWARTZ: Well, of course, the new court decisions you don't really have to prove anything but that it didn't belong to the people who—

MR. HUBBART: Well, I do not want to stipulate to the admission of that in evidence.

[fol. 5] MRS. SCHWARTZ: Okay.

Thereupon—

WALLACE W. CORBIN

was called as a witness by the State, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MRS. SCHWARTZ:

Q State your name and official position, please.

A Wallace W. Corbin, Special Agent, Seaboard Coast Line Railroad.

Q Were you so employed on the 13th of November, 1968?

A Yes, ma'am.

Q Did you have occasion to see Raymond Smith and Melvin G. McClain?

A Yes, ma'am.

Q Can you identify them for the Court?

A Yes, the man in the yellow shirt is Smith (indicating); the other is McClain.

Q And can you tell us the approximate time and place and circumstances that you saw them on that date?

A It was approximately 7:55 in the evening.

Q Where?

A When I first observed the three—there was one [fol. 6] other man with them—they were walking south on the west side of the roadway at Northwest 37th Avenue.

Q Whose property is this?
A It's a city street.
Q What did you observe?
A Well, when I passed the three men, they were in full view of my head lights on my automobile as I passed them, then I looked up in the rearview mirror and the three ran from the west side to the east and in behind some freight cars at Colonial Warehouses.
Q Then what happened?
A Well, I parked just north, off from the warehouse, at Valleydale Meats by the office, got out and I notified my yard office to call Hialeah, and as I had men go in behind the freight cars to cover 37th Avenue and 71st Street.
Q Then what happened?
A Then I got on the west side of 37th Avenue adjacent to the car on the north end of the track.
Q What car?
A That car is a—
Q No, what kind of a car?
A Freight, car, box car.
Q Belonging to who?
A It belonged to my company.
[fol. 7] Q Which is?
A Seaboard Coast Line Railroad.
Q A corporation?
A Yes, ma'am.
MRS. SCHWARTZ: We would like to have the Corporate Certificate at this time.
Q (By Mrs. Schwartz) Go ahead. What did you see?
A When I positioned myself on the road, I could see. I could not see the men at this time, but I could hear the noises which is familiar to me as a door hasp—
MR. HUBBART: Your Honor, I am going to object to that. He can describe what he heard, but his opinion of what he was hearing is inadmissible.
I assume that is what he is going to testify to.
THE COURT: Well, he can testify to the sounds, I don't know how you can—

MR. HUBBART: Well, I object to any conclusions or opinions.

THE COURT: Well, I will sustain the objection. Just tell us what you actually heard.

THE WITNESS: I could hear clanking of metal and I could hear the—more or less a scraping or a squeaking sound, which I identified as, having worked these doors previously—

[fol. 8] MR. HUBBART: I am going to object to any conclusions.

THE COURT: Well, I will overrule the objection here. He is saying that—

MR. HUBBART: Well, he is going to identify what he thinks it is.

THE COURT: Well, not what he thinks; what he has heard from long years of experience.

MR. HUBBART: Well, I object to him testifying then as an expert witness. I don't think he could be qualified. I don't think this is a matter for expert opinion.

THE COURT: Well, I will overrule your objection.

THE WITNESS: Well, the squeaking and more or less rusty sound of a door lever being tampered with.

MR. HUBBART: Your Honor, object to that and move to strike. I think that is a conclusion, an opinion. He did not see any of this. He is hearing this. I'm going to move to strike it.

THE COURT: All right. I will grant your motion to strike what it sounded like, except the grating or squeaking noise.

MR. HUBBART: He heard some noises.

THE WITNESS: Well, I heard these noises coming from behind the freight car.

Q (By Mrs. Schwartz) That would be the movement [fol. 9] of what?

MR. HUBBART: Object, Your Honor, that calls for a conclusion.

THE COURT: I'll sustain it.

Q (By Mrs. Schwartz) Then what, if anything, did you do?

A Well, I waited for, oh, "X" number of minutes and the defendant Smith (indicating) came running from behind the north car and went in a northerly direction. There's a building there which blocks any way of leading out than coming back out, and at that time I identified myself and stopped him.

Q What happened with the other two?

A The other two were stopped at 37th Avenue—

MR. HUBBART: I will object to this unless this officer actually stopped them.

Q (By Mrs. Schwartz) Did you see them stopped?

A No, ma'am.

Q Did you see them after they were stopped?

A Yes, ma'am.

Q Where did you see them and when in proximity to when you had stopped Smith did you see them?

A A Hialeah plainclothes car came by at the time I was apprehending Smith. At this time he told me that—

MR. HUBBART: Your Honor, I am going to object [fol.10] to the hearsay.

Q (By Mrs. Schwartz) Don't tell us what he told you. Tell us what you people did.

A Well, at this time it was learned—

THE COURT: Well, as to Smith, of course, he can testify.

MR. HUBBART: I believe he is testifying as to an officer.

THE COURT: He is, as to what the officer told him; but if it was in the presence of Smith, he can testify, as far as that is concerned, but I would exclude it as to McLain.

Go ahead. What did the officer say?

THE WITNESS: He just told me that—

MR. HUBBART: Well, there is no showing as yet that Smith heard all of this.

Q (By Mrs. Schwartz) Was Smith with you at the time?

A Smith was in my presence, yes.

Q When the officer was talking to you?

A Yes.

Q All right. What did he say?

A I was informed that two other men had been stopped, that beyond 7—it would be on 71st Street east of 87th Avenue.

[fol. 11] Q What did you do then?

A We went around to where the other cars were, which were other units of the Hialeah Police Department.

Q Did you see the other two then?

A Yes, ma'am.

Q Were they the same two that were with Smith when you originally saw him?

A They were.

Q And is one of them the other defendant here, Mr. McClain?

A Mr. McClain (indicating).

Q Did you go back to the railroad car?

A Yes, ma'am.

Q What did you observe about the railroad car, if anything?

A The seal had been removed from the locking hasp.

Q Would you describe it or show it to us or—

MR. HUBBART: Your Honor, I am going to object to the word, "removed". It wasn't there or it was there, but as to how it got off I think is a conclusion.

THE COURT: Well, it was removed if it wasn't there, whether it be through nature or something else.

MR. HUBBART: All right.

Q (By Mrs. Schwartz) Would you describe the seal [fol. 12] and what you are referring to?

A The seal is a locking device with a number on it which is coded for various railroads and shippers and what have you. It's a sealing device which locks and it must be broken or cut to be removed once it's applied.

Q Do you have it with you?

A Yes, ma'am.

Q May we see it, please?

A (The witness indicating.)

MRS. SCHWARTZ: We will offer this into evidence.

Q (By Mrs. Schwartz) Now, will you tell us where that fits or how it works, what it goes into—

MR. HUBBART: If it's being offered into evidence at this time, I am going to object to it because I don't think it has been properly identified.

MRS. SCHWARTZ: We'd offer it for identification at this time.

(The item referred to was thereupon marked, "State's Exhibit 1-A for Identification.")

Q (By Mrs. Schwartz) Now, would you tell us where you got this particular seal from?

A This particular seal is the Illinois Central Railroad seal, which was applied where the car was loaded, and it is numbered.

[fol. 13] This seal was lying under the hasp locking device on the ground.

Q Now, had you passed this particular car prior to this incident?

A Yes, ma'am.

Q How long ago?

A Three or four minutes.

Q Was it at that time locked?

A Yes, ma'am.

Q Are you sure?

A I'm positive. Because when this seal is on the hasp this way (indicating), you have a tendency to pull them and bend them where they will face out and that's for purposes of a later check, they can be flashed.

Q So after the noises you heard and the apprehension of these defendants you went back and checked the car and you found this laying there?

MR. HUBBART: Your Honor, I object to this. It is leading and repetitious.

THE COURT: Well, I think the summation is. Sustain your objection.

MRS SCHWARTZ: All right. We'd offer this into evidence at this time.

MR. HUBBART: I am going to object to the admission of the exhibit in evidence.

[fol. 14] THE COURT: Overrule the objection.

THE CLERK: State's Exhibit 2.

(The item referred to was thereupon marked, "State's Exhibit 2.")

Q (By Mrs. Schwartz) What was in the railroad car itself? What was the approximate value, if you know, that was in the railroad car?

MR. HUBBART: I am going to object to the question on the grounds that this witness has not been qualified as an expert on the value, the market value, if any, of any property, if any, that was inside this car.

THE COURT: All right, I will sustain the objection. Let's just get into telling me what was in the car.

Q (By Mrs. Schwartz) What was in the car?

A The car was a full load of—.

Q What do you mean by "full load?" Before you say full load—

A Well, all the merchandise in this particular car was shipped from shipper, and it contained paper products from Kimberly-Clark and Sanitary Pads.

Q About how many cases would you say—or was it a whole—The car was completely loaded?

A Yes, ma'am, it was a full load.

[fol. 15] Q Did this all occur in Dade County, Florida?

A Yes, ma'am.

Q Approximately at what point was this on 71st Street?

A Colonial Warehouse is on the east side of Northwest 37th Avenue, and north of Northwest 71st Street. It's in that corner, and the building extends for approximately a block; so where the defendant Smith was apprehended would be roughly in the neighborhood of 72nd Street, say.

Q Now, from where they were apprehended, where was the car approximately?

A It would be approximately 72nd Street, east of Northwest 37th Avenue.

Q In what, the twenty-six hundred block?

MR. HUBBART: Object to that, Your Honor, as leading.

MRS. SCHWARTZ: I'm sorry.

Let me ask you one other question, please.

THE COURT: I will sustain the objection to your last question.

Q (By Mrs. Schwartz) Did you have any conversation with the defendants?

A None other than—

MR. HUBBART: Your Honor, I am going to object to any conversations. He can answer whether he had any [fol. 16] conversations or not, but I assume at this point he is going to go into it and I object to it.

THE COURT: Yes, just answer, "yes" or "no" if you had a conversation about this with the defendants.

THE WITNESS: Yes.

Q (By Mrs. Schwartz) Did the officers have any conversation with them?

A I couldn't say.

Q Prior to your having any actual conversation did you make any statements to them?

A Yes, ma'am.

Q What statements did you make?

A I advised all three men of their rights.

Q What did you say to them?

A First I identified myself to all three, which I had done previously to defendant Smith, and advised them what they were being placed under arrest for.

I told them that they had the right to remain silent, that any statement they made to me would be used in court against them, that they had the right to an attorney if they did answer any of my questions, if they did not have funds for one, one would be provided for them.

Q What did they say, anything to that?

A No, ma'am. One man said that he had an attorney that he would call.

[fol. 17] Q Did Smith and McClain say whether or not they wanted an attorney at that time?

A No, nobody made no statements.

Q Did you ask them any questions?

A Yes, ma'am.

Q What did you ask them and what did they answer?

MR. HUBBART: Your Honor, I am going to object. Improper predicate under the Miranda decision.

THE COURT: All right, I will overrule the objection, unless you want to voir dire.

MR. HUBBART: No, sir.

THE COURT: All right.

Q (By Mrs. Schwartz) Go ahead.

A I didn't question Smith at all because I got him coming around the car, but when I attempted to question McClain and the third defendant, they said—

Q Just refer to McClain at this time.

A Well, when I questioned McClain he stated that they had just come from some place of business north of the Colonial Warehouse and they weren't behind the freight cars at all.

MRS. SCHWARTZ: I have no further questions.

[fol. 18] CROSS EXAMINATION

BY MR. HUBBART:

Q This particular area that you have been testifying about, is this at or near the property of the Seaboard Airline Railroad Company?

A No.

Q Are there any box cars in this area where you placed these two defendants— Strike that.

Are there any box cars in the area where you placed the defendant Smith under arrest?

A Yes, sir.

Q Approximately how many railroad cars and box cars would you say are in that particular area?

A This particular night there were five; two loads and one empty.

Q This particular night were you on foot or in a car?

A Both.

Q Well, at the time you first saw the defendants you were in a car; right?

A Patrolling, yes, sir.

Q When was the first time you saw the box car in question that night?

A This particular box car had been checked three or four minutes prior to me seeing the defendants.

[fol. 19] Q Did you check it?

A Yes, sir.

Q Do you know whether you were on foot at the time?

A When I checked the car I was on foot, yes sir.

A And did you check the other box cars?

A The other load?

Q How about the other box cars on the railroad?

A Yes, sir.

Q You checked all of them?

A Well, there was three empties and two loads. The two loads were checked, yes, sir.

Q You say, "we"; was there somebody with you?

A No, myself.

Q Now, when you first arrested the defendants—I believe you said the defendant Smith; is that correct?

A Yes, sir.

Q The defendant McClain was not in his presence; is that right?

A No, sir, he was not.

Q You had to transport Smith to McClain; isn't that right?

A Yes, sir.

Q And McClain was in the company of another man?

[fol. 20] A Yes, sir.

Q When you took Smith to McClain, did you have to put him in an automobile, or did you go on foot?

A When we took Smith to McClain, no, sir, he was placed in the police cruiser.

Q Then you drove to the spot where McClain was; is that correct?

A Yes.

Q And approximately what distance was that; about six blocks or so?

A No, sir, that's— A rough estimate would be possibly a block. It was in the parking lot of Colonial Warehouse, where they park their trucks, which is on the south end of the building.

Q This all happened around 8 o'clock in the evening; is that correct?

A Thereabouts, yes, sir.

Q And your testimony is that you did not have a conversation with Smith about his whereabouts; is that right, just McClain?

A I talked with McClain about— I had Smith coming from behind the car.

Q You had already arrested Smith?

A Yes, sir.

Q You had a conversation with McClain?

[fol. 21] A Yes.

Q Don't tell me. I just want to know—

A Yes, sir.

Q —you had a conversation with Smith?

A Yes, sir.

Q You had a conversation with both of them?

A Both of them after we got around to the other side, yes, sir.

Q Now, you did not personally observe either one of these two men breaking and entering any railroad cars; is that correct?

A No, sir, I did not.

MR. HUBBART: No further questions.

Mrs. Schwartz: Your Honor, the State rests.

MR. HUBBART: Your Honor, we are going to move for a judgment of acquittal with respect to both Count One and Count Two of the Information, on the grounds that the State has failed to establish a prima facie case of vagrancy as alleged in Count One, and the State has failed to establish a prima facie case of attempted breaking and entering of a railroad car as alleged in Count Two.

THE COURT: All right. I am going to deny the motion.

[fol. 22] Thereupon—

RAYMOND SMITH

one of the defendants herein, was called as a witness on his own behalf, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HUBBART:

Q Mr. Smith, would you state your name, please?
A Raymond Smith.
Q How old are you, sir?
A Twenty-four.
Q Where do you reside; where do you live?
A I live at 1629 Northwest 40th Street.
Q How long have you lived here in Dade County?
A Three years, sir, maybe a little better.
Q Now, were you employed at the time you were arrested?
A Yes, sir.
Q Where were you employed, sir?
A Food Fair Warehouse on 32nd Avenue and 71st Street.
Q How long have you been so employed?
A Two and a half years.
Q What kind of work did you do there?
A I load beef, swinging beef.
[fol. 23] Q Let me call your attention to the date in question, November the 13th, 1968; did you on that date know the gentleman who is standing next to you, Mr. Melvin McClain?
A No, sir, I had never seen him before.
Q All right. Did you on that date attempt to break and enter a railroad car?
A No, sir.
Q Do you remember this gentleman standing right next to you?
A Yes, sir, I remember him.
Q You remember him placing you under arrest?
A Yes, sir.
Q Would you tell the Judge in your own words the circumstances under which you were placed under arrest and what you were doing in that area, sir?
A Yes, sir. Your Honor, I was walking down 37th Avenue going to Hialeah and that gentleman over there, he came from across the street with a shotgun and told

me to halt, so I stopped and put my hands up and he asked me where was I going and I told him I was going to Hialeah to a bar.

So this car came up and he put me in the car and brought me back around to 71st Street and 32nd Avenue, and this man and another man was standing there. [fol. 24] So he asked them, "Do you all know him?" They said, "No."

He asked me. I told him, "No," I didn't know them, and so he stood there and some more patrol cars came up; and the next thing I knowed I was in the car.

Q What were you doing in that area?

A I just left a bar. I was going to Hialeah?

Q What were you doing in Hialeah?

A I was going to meet a girl. I been going with her about two years.

Q What time was this?

A Between 7:30 and 8 o'clock, because I left the Perry Bar at 7:30.

Q Had you been in the company of Mr. McClain during that evening prior to your arrest?

A No, sir, I had never seen the man.

Q At the time you were placed under arrest, where were you?

A I was going down 37th Avenue.

Q Were you on the public street?

A Yes, sir.

Q Were you wandering and strolling around from place to place without a lawful object?

A No, sir, I was going to Hialeah just like I told him. That's were I was going and he stopped me. [fol. 25] He throwed the shotgun on me; and next thing I know there was a car pulled up. He told me to get in.

MR. HUBBART: Your witness.

CROSS EXAMINATION

BY MRS. SCHWARTZ:

Q Had you just come from behind the freight cars?

A No, ma'am, I was walking down 37th Avenue.

Q You never were behind the freight cars at all?

A No, ma'am.
Q He just picked you up off the street?
A Just walking down the street.
MRS. SCHWARTZ: No further questions.

Thereupon—

MELVIN GRAHAM McCLAIN

one of the defendants herein, was called as a witness on his own behalf, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HUBBART:

Q Would you state your name, please, sir?
A Melvin McClain.
Q Where do you live?
A 3085 Northwest 56th Street.
[fol. 26] Q How old are you?
A Twenty-six.
Q Were you employed at the time you were arrested?
A Yes, sir, I worked for the City of Hialeah.
Q Hialeah?
A Yes.
Q What do you do for the city of Hialeah?
A I tote garbage.
Q How long have you been so employed?
A Off and on three years.
Q Were you employed at the time you were arrested for the City of Hialeah?
A Yes, sir.
Q Now let me call your attention to the 13th of November, 1968; did you during that evening prior to the time you were placed under arrest ever see the gentleman standing next to you, Mr. Raymond Smith?
A No, sir.
Q All right. On November the 13th, 1968, at around seven or eight o'clock in the evening did you attempt to break and enter a railroad car?

A No, sir.

Q Do you remember being placed under arrest that evening?

[fol. 27] A Yes, sir, when me and—

Q Was it this gentleman here that placed you under arrest, or another officer?

A Well, it was an officer in a police cruiser what stopped Johnny Baker and I. We was headed down the street, down to Sweet Papers.

Q And were you at the time you were placed under arrest on the public street?

A Yes, sir.

Q Were you on the sidewalk?

A Well, it was in the street.

Q Where were you going at the time?

A We was going down towards 36th Avenue.

Q Who were you with?

A Johnny Baker.

Q Where had you first met Johnny Baker that evening?

A He came by my house around about—maybe about a quarter after seven.

Q What, if anything, did you two then do?

A Well, he was going— He asked me to go to Sweet Papers with him because—

Q What is Sweet Paper now?

A That's a warehouse over in Hialeah.

Q What was the purpose of going there?

A Well, the fellow had owed him some money and he asked me to go out there with him. So we was walking out there.

Q You were going to meet somebody at this location?

A Yes.

Q How far had you gone before you were placed under arrest?

A Before I left the house?

Q From the time you— From the place where you left your house to the place where you were placed under arrest, how far was that?

A Well, we had walked about 11 blocks.

Q And how far were you from your destination when you were arrested?

A One more block. Because it was on 36th Avenue.

Q Would you tell the Court then in your own words what happened that particular evening after you were placed under arrest?

A Well, nothing. Me and Johnny Baker was headed toward 36th Avenue, that's when the police, Officer Meadows, stopped us. Then later on that's when they brought this gentleman around here and asked me did I know him (indicating).

[fol. 29] Q Let the record reflect the witness has referred to the co-defendant, Mr. Raymond Smith.

Were you that evening wandering and strolling around from place to place without any lawful purpose or object?

A No, sir.

MR. HUBBART: Your witness.

CROSS EXAMINATION

BY MRS. SCHWARTZ:

Q Do you know the freight cars that are being referred to?

A Ma'am?

Q Do you know about the freight cars, these box cars that we're discussing?

A No, I didn't see no box cars.

Q You weren't through the railroad yards at all?

A No, only thing was parked out there was some trucks, I guess, some trailers.

Q Were you near any box cars or freight cars at any time?

A No.

Q You never went through the yard?

A No.

Q I have no further questions—

[fol. 30] Were you walking or running?

A Walking.

MRS. SCHWARTZ: No further questions.

MR. HUBBART: Your Honor, at this time the defense rests.

Does the state having any rebuttal?

MRS SCHWARTZ: No, the State has rested.

MR. HUBBART: Your Honor, at this time we will renew the motion for judgment of acquittal as to both Count One and Count Two of the Information, on the ground that the State has failed to establish a prima facie cause of vagrancy as alleged in the Information, and under the statute, and the State has failed to establish a prima facie case of attempted breaking and entering a railroad car, as alleged in Count Two of the Information.

THE COURT: All right. I will deny the motion. Judge the defendants guilty as charged.

MR. HUBBART: Your Honor, I would like to make an argument, if I may, on the issue of guilt or innocence.

THE COURT: All right. I'm sorry.

Strike that adjudication.

MR. HUBBART: Your Honor, the only witness presented by the State in this case is Mr. Wallace Corbin of the Seaboard Airline Railroad Company, who testifies that he did not see these two defendants committing the [fol. 31] crime of, as alleged in Count Two of the Information, attempted breaking and entering a railroad car.

He did not see these two men committing any crime at all. He testified that he heard some clanking of metal and some squeaking noises coming from behind a freight car.

That is all he testified to. He says there are three men back there—or at least he saw three men around in that area just prior thereto. I believe his testimony was that he saw, at around 7:55, his testimony, these two men plus a third man walking south on Northwest 37th Avenue, and that when he passed them he saw them in the rearvision mirror disappear in and around apparently the area of a number of box cars.

Then a little later, if I have the testimony correct, he hears these clanking noises and so on. Then he comes up and sees one of the defendants, Mr. Smith, which he places under arrest at a point somewhat distant from the box car.

He testifies he comes back to the box car and he sees one of these seals here, which has been introduced in evidence, which has been either pulled out or tampered with in some way—and that's it.

He said he saw, I believe, the box car prior thereto and had checked it and the seal was intact; afterwards [fol. 32] he sees it and apparently it's been tampered with.

Well, this may be a prima facie case or it may be sufficient evidence if believed— Of course, we don't for a minute concede that this is a correct view of the facts, but even if we assume for a moment that it is, all the State has established is that one of these three men—not necessarily the two men standing before you—tampered with the seal on this box car.

Now, that hardly establishes that they were attempting to break and enter. Perhaps they were attempting to steal the seal or damage the outside of the box car in some way.

At any rate, it certainly doesn't establish that either one of these two defendants was doing the attempted breaking and entering, and it doesn't show that either one of these two defendants, if they were not, were assisting or aiding and abetting in some way, because again we have no direct evidence and the circumstantial evidence certainly leaves a great deal to be desired.

There is a reasonable hypothesis of innocence, even if one accepts the testimony of the sole State witness; namely, that these two defendants were simply there and the third defendant, a third man was putting his hands on the seal.

[fol. 33] That doesn't constitute aiding and abetting, simply being there, and furthermore, even if we assume that it is, the third man, which I think would be a reasonable hypothesis, was tampering with the seal, that doesn't show that he was attempting to break and enter with the purpose of stealing something inside.

I think had the door been broken into, been a hole in the place or the whole door been open and some effort made to get in to take something, I think possibly the State would have a case; but just breaking the seal,

I suggest, does not establish the case and, furthermore, it certainly doesn't establish the specific intent which is alleged, the specific intent to commit larceny: to-wit, grand larceny.

The mere fact that there was property inside the place doesn't mean that they had the intent to go in there and steal something. They may have had the intent to go in and sleep off a drunk, or if they had no place to stay, just go to sleep. That is certainly a reasonable hypothesis.

So, furthermore, both of the two defendants have taken the stand and have denied this set of facts completely, said they were not in this area, they didn't even know each other prior to this time, and they were just in the area at the time these officers came, apparently [fol. 34] some Hialeah officers—they're not here in Court—and the gentleman who has testified, Mr. Corbin, placing them under arrest.

So I would suggest to the Court that the State has not established its case beyond and to the exclusion of every reasonable doubt.

Now, one further motion I would like to make, and that is a motion to strike the testimony of Mr. Corbin with reference to the statement made by him by, I believe, one of the defendants. I believe it was McClain.

I am going to move to strike that particular portion of the testimony on the grounds that this statement was elicited from McClain in violation of his rights to counsel guaranteed by the Sixth Amendment; his privilege against self-incrimination guaranteed by the Fifth Amendment, as made enforceable by the States by the Fourteenth Amendment, as interpreted in the Miranda versus the State of Arizona.

THE COURT: What statement was that?

MR. HUBBART: The statement of what he was doing in the area.

THE COURT: I will grant that motion.

MR. HUBBART: All right.

THE COURT: All right. I will deny your motion and adjudge the defendants guilty as charged.

[fol. 35] On Count One, sentence of vagrancy, of course, I will sentence the defendants to the time they have already served on that charge.

On the attempted breaking and entering, I will sentence each of the defendants to six months in the County Jail, and thereafter one year probation.

All right.

MR. HUBBART: Your Honor, is that with credit for time served?

THE COURT: Give them credit for time they have already been in jail. All right.

(Thereupon the taking of the trial was concluded.)

[Reporter's Certificate to foregoing transcript omitted in printing]

IN THE CRIMINAL COURT OF RECORD,
In and for Dade County, State of Florida

OCTOBER TERM, 1968

68-6546

[Filed Nov. 25, 1968, J. F. McCracken, Clerk]

THE STATE OF FLORIDA

vs.

RAYMOND SMITH, MELVIN McCLAIN, AND JOHNNY L. BAKER

INFORMATION FOR I. VAGRANCY, II. ATTEMPTED BREAKING AND ENTERING A RAILROAD CAR

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

ALFONSO C. SEPE, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that RAYMOND SMITH, MELVIN McCLAIN, and JOHNNY L. BAKER on the 13th day of November, 1968, in the County and State aforesaid, were then and there vagrants by wandering and strolling around from place to place without any lawful purpose

---

JFB:jhb
11/21/68

(A) Jail No. 28523-68 Bkd.: 11/13/68
(B) Jail No. 28524-68 Bkd.: 11/13/68
(C) Jail No. 28522-68 Bkd.: 11/13/68

Waived trial by jury with approval of court and consent of state.

/s/ Raymond Smith
/s/ Johnny Baker
/s/ Melvin McClain

or object, in violation of 856.02 Florida Statutes, Contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

COUNT TWO.

And ALFONSO C. SEPE, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that RAYMOND SMITH, MELVIN McCLAIN, and JOHNNY L. BAKER on the 13th day of November, 1968, in the County and State aforesaid, did unlawfully and feloniously attempt to break and enter a railroad car located at approximately the 2600 block of Northwest 71st Street, Dade County, Florida, property of SEABOARD AIR LINE RAILROAD COMPANY, a Corporation with intent to commit a felony therein, to-wit: Grand Larceny with intent to unlawfully take, steal and carry away money, goods and chattels of the value of more than ONE HUNDRED DOLLARS ($100.00), good and lawful money of the United States of America, property of SEABOARD AIR LINE RAILROAD COMPANY, a Corporation as custodian, by defendants breaking the seal and attempting to open door of railroad car, in violation of 776.04 and 810.04 Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

/s/ Alfonso C. Sepe
Assistant State Attorney,
Eleventh Judicial Circuit
of Florida

STATE OF FLORIDA:
COUNTY OF DADE:,

Personally appeared before me, ALFONSO C. SEPE, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged.

/s/ Alfonso C. Sepe
Assistant State Attorney,
Eleventh Judicial Circuit
of Florida

SUBSCRIBED IN GOOD FAITH.

Sworn to and subscribed before me this 21st day of November, 1968.

J. F. McCracken, Clerk
Criminal Court of Record,
Dade County, Florida

By: /s/ [Illegible] , D.C.

Seal: Criminal Court of Record

Defendant RAYMOND SMITH, et al, arraigned in open Court on the within Information and pleaded

_____

_____
Deputy Clerk,
Criminal Court of Record,
Dade County, Florida

DIVISION "A"—December 3, 1968

#68-6546

STATE OF FLORIDA

vs.

RAYMOND SMITH — A
MELVIN McCLAIN — B

VAGRANCY

ATTEMPTED BREAKING AND ENTERING A RAILROAD CAR

Maynard A. Gross, Assistant State Attorney.

The Defendants, Raymond Smith and Melvin McClain in Proper Person.

Reported by June LaPoint,

The Court, upon the oral request of the Defendants, set Appearance Bond in the amount of $1,000.00 for the Defendant, Raymond Smith and $1,000.00 for the Defendant, Melvin McClain.

DIVISION "A"—December 5, 1968

#68-6546

STATE OF FLORIDA

vs.

RAYMOND SMITH — A
MELVIN MCCLAIN — B

VAGRANCY

ATTEMPTED BREAKING AND ENTERING A RAILROAD CAR

Maynard A. Gross, Assistant State Attorney.

Arthur B. Stark, Assistant Public Defender, Counsel for the Defendants.

Reported by June LaPoint.

The Court adjudged the Defendants, Raymond Smith, insolvent and appointed the Public Defender, as follows:

SEE BOOK 310, PAGE 229

The Court adjudged the Defendant, Melvin McClain, insolvent and appointed the Public Defender, as follows:

SEE BOOK 310, PAGE 230

Counsel for the Defendants orally presented a Motion to Dismiss Count One of the Information, which Motion the Court denied.

The Defendants, Raymond Smith and Melvin McClain, were arraigned in open Court by Maynard A. Gross, Assistant State Attorney, and each pleaded not guilty, waiving trial by jury.

Counsel for the Defendant orally presented a Motion for Bill of Particulars, which Motion the Court granted in part and denied in part.

Counsel for the Defendants orally presented a Motion to Suppress, upon which Motion the Court reserved ruling.

DIVISION "A"—December 18, 1968

#68-6546

STATE OF FLORIDA

vs.

RAYMOND SMITH — A
MELVIN McCLAIN — B

VAGRANCY

ATTEMPTED BREAKING AND ENTERING A RAILROAD CAR

Barbara D. Schwartz, Assistant State Attorney.

Phillip A. Hubbart, Assistant Public Defender, Counsel for the Defendant.

Reported by Teen Patterson.

Phillip A. Hubbart, Assistant Public Defender, Counsel for the Defendant, orally presented a Motion to Dismiss Count One of the Information, which Motion the Court denied.

All the Witnesses and the Defendant were sworn.

State's Witnesses:

1. Wallace Corbin

The Court admitted into evidence the following items:

Corporation Certificate _____ State's Exhibit #1

Lock Seal _____ State's Exhibit #2

State Rests.

Counsel for the Defendant orally presented a Motion for Judgment of Acquittal, which Motion the Court denied.

Defendant's Witnesses:

1. Raymond Smith, Defendant "A"
2. Melvin McClain, Defendant "B"

Defendant Rests.

Counsel for the Defendant orally renewed his Motion for Judgment of Acquittal, which Motion the Court denied.

The Court adjudged the Defendant, Raymond Smith, guilty, and sentenced him, as follows:

SEE BOOK 312, PAGE 239

The Court placed the Defendant, Raymond Smith, on probation at the expiration of sentence, as follows:

SEE BOOK 312, PAGES 249 and 250

The Court adjudged the Defendant, Melvin McClain, guilty and sentenced him, as follows:

SEE BOOK 312, PAGE 240

The Court placed the Defendant, Melvin McClain, on probation, at the expiration of sentence, fixing the terms and conditions thereof.

BENCH DOCKET

CRIMINAL COURT OF RECORD
DADE COUNTY, FLORIDA

STATE OF FLORIDA

vs.

RAYMOND SMITH, DEFENDANT

Charge: Vagrancy, etc. Case No. 68-6546-A

JUDGMENT

It appearing unto this Court that you, Raymond Smith have been regularly tried and convicted of Vagrancy; Unlawfully and feloniously Attempting to Break and Enter a Railroad Car

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offenses as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that as to Count one of the Information, you be imprisoned by confinement at hard labor in the Dade County Jail for a term of Thirty six (36) days sentence to begin from date of incarceration.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that as to Count Two of the Information, you be imprisoned by confinement at hard labor in the Dade County Jail for a term of Six (6) months, sentence to begin from date of incarceration.

DONE AND ORDERED in open Court in Miami, Dade County, Florida this 18 day of December, A.D. 1968.

By /s/ Jack M. Turner
Judge
Div. A 1

Filed this 18 day of December A.D. 1968 and recorded in Criminal Court of Record, Minutes No. 312 on Page 239.

J. F. McCracken, Clerk

By Sara Baldwin, Deputy

BENCH DOCKET

CRIMINAL COURT OF RECORD
DADE COUNTY, FLORIDA

STATE OF FLORIDA

vs.

MELVIN McCLAIN, DEFENDANT

Charge: Vagrancy, etc. Case No. 68-6546-B

JUDGMENT

It appearing unto this Court that you, Melvin McClain have been regularly tried and convicted of Vagrancy; Unlawfully and feloniously Attempting to Break and Enter a Railroad Car

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offenses as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that as to Count one of the Information, you be imprisoned by confinement at hard labor in the Dade County Jail for a term of Thirty six (36) days sentence to begin from date of incarceration.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that as to Count Two of the Information, you be imprisoned by confinement at hard labor in the Dade County Jail for a term of Six (6) months, sentence to begin from date of incarceration.

DONE AND ORDERED in open Court in Miami, Dade County, Florida this 18 day of December, A.D. 1968.

By /s/ Jack M. Turner
Judge
Div. A 1

Filed this 18 day of December A.D. 1968 and recorded in Criminal Court of Record, Minutes No. 312 On Page 240.

J. F. McCracken, Clerk

By Sara Baldwin, Deputy

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-6546

[File Endorsement Omitted]

THE STATE OF FLORIDA, PLAINTIFF

vs.

RAYMOND SMITH AND MELVIN MCCLAIN, DEFENDANTS

ORDER—filed December 24, 1968

THIS CAUSE having come on for a hearing on the defendants' oral Motion to Dismiss Count I of the Information filed in this cause, and the Court having heard legal arguments from the parties and being fully advised on the premises, and the Court having previously ruled orally in open court that said Motion to Dismiss is denied and the Court desiring to incorporate said oral ruling into a written Order,

the Court finds that Fla. Stat. 856.02, upon which the Information in Count I in this cause is predicated, is constitutional within the meaning of the due process clause of the Fourteenth Amendment to the United States Constitution, it is hereby

ORDERED AND ADJUDGED that defendants' oral Motion to Dismiss Count I of the Information is hereby denied nunc pro tunc.

/s/ Jack M. Turner
JACK TURNER,
Judge of the Criminal
Court of Record, in and
for Dade County, Florida

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-6546

[File Endorsement Omitted]

THE STATE OF FLORIDA, PLAINTIFF

vs.

RAYMOND SMITH AND MELVIN MCCLAIN, DEFENDANTS

ORDER—filed December 24, 1968

THIS CAUSE, having come on for a hearing on the defendants' Motion for a New Trial and the Court having heard legal argument from the parties in this cause, and the Court being fully advised on the premises,

the Court finds that Fla. Stat. 856.02, upon which the defendants were prosecuted on Count I of the Information filed in this cause, is constitutional within the meaning of the due process clause of the Fourteenth Amendment to the United States Constitution, it is hereby

ORDERED AND ADJUDGED that the defendants' Motion for a New Trial is hereby denied.

DONE AND ORDERED in Chambers, Miami, Florida, this 24th day of January, 1968.

/s/ Jack M. Turner
JACK TURNER,
Judge of the Criminal
Court of Record, in and
for Dade County, Florida

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-6546

THE STATE OF FLORIDA, PLAINTIFF

vs.

RAYMOND SMITH AND MELVIN McCLAIN, DEFENDANTS

MOTION FOR NEW TRIAL—filed December 26, 1968

COMES NOW the defendants, RAYMOND SMITH and MELVIN McCLAIN, by and through their undersigned attorney, ROBERT L. KOEPPEL, Public Defender for the 11th Judicial Circuit of Florida, and files this their Motion for New Trial in the above-styled cause and would state as grounds the following:

1. The Court erred in denying the defendants' oral Motion to Dismiss Count I of the Information in this cause because this Count in the Information was predicated on a State statute (Fla. Stat. 856.02), which is so broad and vague in nature that it violates the due process clause of the Fourteenth Amendment of the United States Constitution.

2. The Court erred in denying the defendants' oral Motion to Dismiss Count I of the Information since the charge contained in Count I of the Information is so broad and vague in nature that it violates the due process clause of the Fourteenth Amendment of the United States Constitution.

3. The defendants' conviction for Vagrancy under Fla. Stat. 856.02 is void since said statute upon which the defendants' conviction is unconstitutional within the meaning of the due process clause of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

ROBERT L. KOEPPEL
Public Defender
11th Judicial Circuit
of Florida

By /s/ Phillip A. Hubbart
PHILLIP A. HUBBART

[Certificate of Service (omitted in printing)]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-6546

THE STATE OF FLORIDA

vs.

RAYMOND SMITH AND MELVIN McCLAIN, DEFENDANTS

NOTICE OF APPEAL—filed January 14, 1969

The Defendants, Raymond Smith and Melvin McClain, takes and enters his appeal to the Florida Supreme Court, to review the judgment and sentence of the Criminal Court of Record, in and for Dade County, Florida, bearing date the 18th day of December, A.D., 1968, and rendered on the 24th day of December, A.D., 1968, as to Count I of the Information.

The nature of the order appealed from is a final judgment of conviction and sentence.

All parties to said cause are called upon to take notice of the entry of this appeal.

DATED this 14th day of January, A.D., 1969.

ROBERT L. KOEPPEL
Public Defender
11th Judicial Circuit
of Florida

By /s/ Phillip A. Hubbart
PHILLIP A. HUBBART
Assistant Public Defender

[Certificate of Service (omitted in printing)]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 68-6546

[File Endorsement Omitted]

THE STATE OF FLORIDA, PLAINTIFF

vs.

RAYMOND SMITH AND MELVIN GRAHAM McCLAIN,
DEFENDANTS

ASSIGNMENTS OF ERROR—filed March 4, 1969

COMES NOW the defendants, RAYMOND SMITH and MELVIN GRAHAM McCLAIN, by and through their undersigned attorney, ROBERT L. KOEPPEL, Public Defender for the Eleventh Judicial Circuit of Florida, and respectfully filed this his Assignments of Error intended to be relied upon in the Supreme Court of Florida for reversal of judgment and sentence entered in the above-styled cause.

1. The lower court erred in denying the defendants' oral motion to dismiss Count I of the Information filed against the defendants in this cause on the ground that Florida Statute 856.02 proscribing "wandering and strolling around from place to place without any lawful purpose or object," upon which Count I of the Information was predicated, states no ascertainable standard of criminal conduct, is constitutionally void for vagueness, and accordingly is unconstitutional under the due process clause of the Fourteenth Amendment to the United States Constitution.

2. The lower court erred in denying the defendants' motion for a new trial on the ground that the defendants' conviction herein is predicated on an unconstitutional vagrancy statute, to wit: The "wandering" section of Florida Statute 856.02 which proscribes "wandering and strolling around from place to place without any lawful purpose or object." This section of Florida

Statute 856.02 proscribes no ascertainable standard of criminal conduct, is uncontitutionally void for vagueness and accordingly violates the due process clause of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

ROBERT L. KOEPPEL
Public Defender
11th Judicial Circuit

By /s/ Phillip A. Hubbart
PHILLIP A. HUBBART
Assistant Public Defender

[Certificate of Service (omitted in printing).]

[Clerk's Certificate to foregoing transcript omitted in printing]

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED

IN THE SUPREME COURT OF FLORIDA
JULY TERM A. D. 1970

Case No. 38,210

RAYMOND SMITH, ET AL., APPELLANTS

—*vs*—

STATE OF FLORIDA, APPELLEE

OPINION Filed September 16, 1970

An Appeal from the Criminal Court of Record, Dade County, Jack M. Turner, Judge

Robert L. Koeppel, Public Defender and

Phillip A. Hubbart, Assistant Public Defender, for Appellant

Earl Faircloth, Attorney General and J. Christian Meffert, Assistant Attorney General, for Appellee

ROBERTS, J.

This cause is before the court on a direct appeal from a judgment convicting the defendants-appellants of the offense of vagrancy "by wandering and strolling around from place to place without any lawful purpose or object," as denounced by § 856.02, Florida Statutes. The trial court upheld the statute as against an attack made in a motion to dismiss and again in a motion for a new trial filed by the defendants on the ground that the offense charged was so broad and vague in nature as to violate the due process clause of the federal and state constitutions. We have jurisdiction of the appeal under Section 4, Article V, of the Constitution. *Milliken* v. *State*, Fla. 1961, 131 So.2d 889.

The attack here made upon the particular provision of the vagrancy statute alleged to have been violated by

the appellants is substantially the same as that made in *Johnson* v. *State*, Fla. 1967, 202 So.2d 852. In that case the court was unanimous in holding that the provision of the statute here in question was not susceptible to the charge of vagueness there made against it. In the well considered concurring opinion filed by Chief Justice Ervin it was stated that our statute

> ". . . appears to be of the genre of vagrancy laws which have long been upheld as necessary regulations to deter vagabondage and prevent crimes and the imposition upon society of able bodied irresponsibles who of their own volition become burdens upon others and particularly on their families for support."

It was held also that the statute meets the tests of certainty outlined in State ex rel. *Lee* v. *Buchanan*, Fla. 1966, 191 So.2d 33; *Carter* v. *State*, Fla. 1963, 155 So. 2d 787; and *Tracey* v. *State*, Fla. 1961, 130 So.2d 605. The decision in *Johnson* was reversed by the United States Supreme Court because of a lack of evidence to support the judgment of conviction, without reaching the question of the constitutionality of the statute. See *Johnson* v. *Florida*, 391 U.S. 596, 20 L.Ed.2d 838, 88 S.Ct. 1713.

We have reconsidered our decision in the *Johnson* case in the light of the decisions of other courts cited by appellants as well as the decision of the United States District Court for the Southern District of Florida in *Lazarus* v. *Faircloth*, 301 F.Supp. 266 (June 9, 1969), declaring the entire vagrancy statute, Section 856.02, to be invalid. The *Lazarus* decision is now on direct appeal to the United States Supreme Court. We find nothing in these decisions to persuade us to recede from our previous conclusion respecting the validity of Section 856.02.

Accordingly, the judgment appealed from should be and it is hereby

Affirmed.

ERVIN, C.J., THORNAL, CARLTON and ADKINS, JJ., concur
BOYD, J., dissents with opinion
DREW, J., dissents and concurs with BOYD, J.

BOYD, J., DISSENTING:

I must dissent to the majority opinion. The statute in question was designed long ago to prevent idle and irresponsible persons from living on the income of those who earned their living by the sweat of their brows.

In our time a large portion of our population retires at an early age and is encouraged to relax in the Florida sunshine. Hundreds of thousands of tourists visit Florida. They should not be required to prove they have a lawful purpose. It would be a contravention of our basic understanding of constitutional rights to jail persons in this State for "wandering around without having a lawful purpose." Specifically the requirement that persons who wander around must have a lawful purpose is too vague to notify the public as to what standard of conduct the State requires. It seems logical to conclude that to prove an accused person had no lawful purpose the State must show the defendant was engaging in an unlawful purpose. The burden must be upon the State to prove one is doing an unlawful act.

Vagrancy statutes have been widely used by police authorities to hold people remotely suspected of crime while investigations were conducted. Modern interpretations of individual civil rights under state and federal constitutions clearly prohibit this now. If one is engaging in unlawful conduct the State should charge the person with violating a specific law. There is certainly no shortage of criminal laws.

DREW, J., concurs

SUPREME COURT OF THE UNITED STATES

No. 6294, October Term, 1970

RAYMOND SMITH and MELVIN MCCLAIN, PETITIONERS

v.

FLORIDA

On petition for writ of Certiorari to the Supreme Court of the State of Florida.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 14, 1971

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